In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 6566 of 2006
Date of decision:8-12-2006

Amarjit singh .....Petitioner

Versus

Surjit Kaur .....Respondent

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr. B.S.Bhasaur, Advocate, for the petitioner.

VINOD K.SHARMA,J.

By way of present revision petition the order passed by the learned Civil Judge (Jr.Divn), Dhuri, has been challenged, that the respondent plaintiff had moved an application for summoning Dev Raj, PW-2 and Bahadur Singh PW-3 for getting their signatures appended on the affidavits dated 16-5-2005. The plaintiff had examined these witnesses and the affidavits duly attested by the Oath Commissioner were tendered in the Court by way of examination-in-chief. However, inadvertently, the affidavits were not signed by these witnesses though these witnesses had to be cross-examined by the learned counsel for the petitioner. It was pleaded that the omission was incidental and not intentional. It was also submitted that the witnesses have duly signed the register of the Oath Commissioner,

who attested the affidavits.

The learned trial Court in exercise of inherent powers and by relying on the judgment of the Hon'ble Madras High Court in the case of **S.Samsen Papli Vs. Sridevi 2006 (1) RCR (Crl.) 514** allowed the said application and directed that affidavits of PW-2 and PW-3 duly attested be placed on record in substitution of the original affidavits. Costs of Rs. 500/- were also awarded.

Mr. B.S. Bhasaur, learned counsel for the petitioner, contended that the impugned order cannot be sustained as it was not open to the trial Court to recall a witness. In support of this contention, learned counsel placed reliance on the judgment of this Court in the case of **Hindu Khandan Mustraka Vs. Ram Sarup, 2001(4) RCR (Civil) 638,** wherein this Court has been pleased to hold that a witness cannot be recalled on the plea that he did not tell the truth when he appeared earlier. He also placed reliance on the judgment of this Court in the case of **Surinder Kaur Vs. Karanbir Singh, 2004 (3) RCR (Civil) 161** to contend that no witness can be recalled on the application of the parties as under Order 18 Rule 17 of the Code of Civil Procedure the Court can only call a witness for its convenience and not on the application of the parties. Thus the contention of the learned counsel for the petitioner was that this order would be deemed to have been passed under Order 18 Rule 17 of the CPC and, therefore, the same cannot be sustained.

I find no merit in this contention. Inadvertent mistake has been ordered to be corrected by the Court in exercise of inherent

powers. It may further be noticed that the lapse was not pointed out by the petitioner when these witnesses were cross-examined. There is no illegality or lack of jurisdiction in the order passed by the learned trial court which may call for interference by this Court.

Dismissed.

Dec. 8,2006 **(VINOD K.SHARMA)**
'dls' **JUDGE**